

Section I — Judicial Structure & Philosophy

How Judges Understand Their Role Shapes Everything That Follows

Courts do not operate in a vacuum. Every judicial decision—whether involving elections, taxes, religious liberty, public safety, or economic regulation—flows from a more fundamental question that is rarely asked explicitly but always answered implicitly: **What is a judge’s job?**

In Wisconsin, the Supreme Court is not merely an appellate tribunal resolving private disputes. It is the final expositor of the state constitution, the ultimate referee between the political branches, and the governing board of an entire branch of government. How its members understand their authority determines not only how individual cases are decided, but how power itself is allocated across the state.

Historically, Wisconsin courts embraced a restrained judicial philosophy grounded in **text, history, precedent, and institutional humility**. Judges understood their role as applying the law as written, respecting the policy judgments of elected lawmakers, and adhering to precedent absent extraordinary justification. This approach did not eliminate disagreement, but it imposed discipline. It constrained judicial discretion and preserved democratic accountability.

That tradition has come under strain.

In recent years, a competing philosophy has gained prominence—one that treats constitutional interpretation as a vehicle for advancing contemporary values, social outcomes, or perceived moral imperatives. Under this approach, longstanding doctrines such as deference to the legislature, the presumption of constitutionality, and stare decisis are viewed not as safeguards of the rule of law, but as obstacles to be overcome. Judicial power is no longer exercised cautiously; it is wielded affirmatively.

This shift is not abstract. It has concrete consequences.

A court that views itself as a super-legislature will inevitably revisit settled law. A court that prioritizes outcomes over interpretation will treat precedent as provisional. And a court that sees its role as correcting perceived policy failures will expand its authority at the expense of elected institutions. Over time, the result is not merely different decisions, but a different system of governance—one in which the judiciary increasingly displaces the legislature and executive as the primary driver of public policy.

The materials in this section examine that foundational divide. They explore how judicial philosophy manifests in court administration, case selection, precedent adherence, and the internal governance of the judicial branch itself. They also illustrate why debates over “text versus values” are not academic disputes, but the fault line upon which Wisconsin’s constitutional order now rests.

Before evaluating what the Wisconsin Supreme Court is doing in specific policy areas, it is essential to understand **how it conceives of its own power**. Structure and philosophy come first. Everything else follows.